

असाधारण

EXTRAORDINARY

भाग 11 -- खण्ड 2

PART II - Section 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 13th December, 1999:—

BILL No. XLIV of 1999

A Bill to consolidate and amend the law relating to protection of designs.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

- 1. (1) This Act may be called the Designs Act, 1999.
- (2) It extends to the whole of India.

Short title, extent and commencement.

- (3) It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
 - 2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(a) "article" means any article of manufacture and any substance, artificial, or partly artificial and partly natural; and includes any part of an article capable of being made and sold separately;

- (b) "Controller" means the Controller-General of Patents, Designs and Trade Marks referred to in section 3:
- (c) "copyright" means the exclusive right to apply a design to any article in any class in which the design is registered;
- (d) "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (ν) of sub-section (I) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957.

43 of 1958. 45 of 1860. 14 of 1957.

(e) "High Court" shall have the same meaning as assigned to it in clause (i) of section 2 of the Patents Act, 1970;

39 of 1970.

- (f) "legal representative" means a person who in law represents the estate of a deceased person;
- (g) "original", in relation to a design, means originating from the author of such design and includes the cases which though old in themselves yet are new in their application:
- (h) "patent office" means the patent office referred to in section 74 of the Patents Act, 1970.
- 39 of 1970.
- (i) "prescribed" means prescribed by rules made under this Act;
- (f) "proprietor of a new or original design",—
- (i) where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed:
- (ii) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and
- (iii) in any other case, means the author of the design; and where the property in or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

CHAPTER II

REGISTRATION OF DESIGNS

Controller and other officers. 3. (1) The Controller-General of Patents, Designs and Trade Marks appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958 shall be the Controller of Designs for the purposes of this Act.

43 of 1958.

- (2) For the purposes of this Act, the Central Government may appoint as many examiners and other officers or with such designations as it thinks fit.
- (3) Subject to the provisions of this Act, the officers appointed under sub-section (2) shall discharge under the superintendence and directions of the Controller such functions of the Controller under this Act as he may, from time to time, by general or special order in writing, authorise them to discharge.

(4) Without prejudice to the generality of the provisions of sub-section (3), the Controller may, by order in writing and for reasons to be recorded therein, withdraw any matter pending before an officer appointed under sub-section (2) and deal with such matter himself either de novo or from the stage it was so withdrawn or transfer the same to another officer appointed under sub-section (2) who may, subject to special directions in the order of transfer, proceed with the matter either de novo or from the stage it was so transferred.

4. A design which—

- (a) is not new or original; or
- (b) has been disclosed to the public any where in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration; or
- (c) is not significantly distinguishable from known designs or combination of known designs; or
- (d) comprises or contains scandalous or obscene matter,

shall not be registered.

5. (1) The Controller may, on the application of any person claiming to be the proprietor of any new or original design not previously published in any country and which is not contrary to public order or morality, register the design under this Act:

Application for registration of designs.

Prohibition of

registration of certain

designs.

Provided that the Controller shall before such registration refer the application for examination, by an examiner appointed under sub-section (2) of section 3, as to whether such design is capable of being registered under this Act and the rules made thereunder and consider the report of the examiner on such reference.

- (2) Every application under sub-section (1) shall be in the prescribed form and shall be filed in the patent office in the prescribed manner and shall be accompanied by the prescribed fee.
- (3) A design may be registered in not more than one class, and, in case of doubt as to the class in which a design ought to be registered, the Controller may decide the question.
- (4) The Controller may, if he thinks fit, refuse to register any design presented to him for registration; but any person aggrieved by any such refusal may appeal to the High Court.
- (5) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.
- (6) A design when registered shall be registered as of the date of the application for registration.
- 6. (1) A design may be registered in respect of any or all of the articles comprised in a prescribed class of articles.
- (2) Any question arising as to the class within which any article falls shall be determined by the Controller whose decision in the matter shall be final.
- (3) Where a design has been registered in respect of any article comprised in a class of article, the application of the proprietor of the design to register it in respect of some one or more other articles comprised in that class of articles shall not be refused, nor shall the registration thereof invalidated—
 - (a) on the ground of the design not being a new or original design, by reason only that it was so previously registered; or

Registration to be in respect of particular article. (b) on the ground of the design having been previously published in India or in any other country, by reason only that it has been applied to article in respect of which it was previously registered:

Provided that such subsequent registration shall not extend the period of copyright in the design beyond that arising from previous registration.

- (4) Where any person makes an application for the registration of a design in respect of any article and either—
 - (a) that design has been previously registered by another person in respect of some other article; or
 - (b) the design to which the application relates consists of a design previously registered by another person in respect of the same or some other article with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof.

then, if at any time while the application is pending the applicant becomes the registered proprietor of the design previously registered, the foregoing provisions of this section shall apply as if at the time of making the application, the applicant, had been the registered proprietor of that design.

Publication of particulars of registered designs.

Power of Controller to make orders regarding substitution of application, etc.

- 7. The Controller shall, as soon as may be after the registration of a design, cause publication of the prescribed particulars of the design to be published in such manner as may be prescribed and thereafter the design shall be open to public inspection.
- 8. (1) If the Controller is satisfied on a claim made in the prescribed manner at any time before a design has been registered that by virtue of any assignment or agreement in writing made by the applicant or one of the applicants for registration of the design or by operation of law, the claimant would, if the design were then registered, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the design or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimants and the applicant or the other joint applicant or applicants, accordingly, as the case may require.
- (2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for registration of a design except with the consent of the other joint applicant or applicants.
- (3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of a design unless—
 - (a) the design is identified therein by reference to the number of the application for the registration; or
 - (b) there is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the design in respect of which that application is made; or
 - (c) the rights of the claimant in respect of the design have been finally established by the decision of a court; or
 - (d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).
- (4) Where one of two or more joint applicants for registration of a design dies at any time before the design has been registered, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

- (5) If any dispute arises between joint applicants for registration of a design whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.
- 9. (1) The Controller shall grant a certificate of registration to the proprietor of the design when registered.

Certificate of registration.

- (2) The Controller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.
- 10. (1) There shall be kept at the patent office a book called the register of designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matter as may be prescribed and such register may be maintained wholly or partly on computer floppies or diskettes, subject to such safeguards as may be prescribed.

Register of designs.

- (2) Where the register is maintained wholly or partly on computer or floppies or diskettes under sub-section (I), any reference in this Act to any entry in the register shall be construed as the reference to the entry so maintained on computer floppies or diskettes.
- (3) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.
- (4) The register of designs shall be *prima facie* evidence of any matter by this Act directed or authorized to be entered therein.

CHAPTER III

COPYRIGHT IN REGISTERED DESIGNS

11. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration.

Copyright on registration.

- (2) If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copyright for a second period of five years from the expiration of the original period of ten years.
- 12. (1) Where a design has ceased to have effect by reason of failure to pay the fee for the extension of copyright under sub-section (2) of section 11, the proprietor of such design or his legal representative and where the design was held by two or more persons jointly, then, with the leave of the Controller one or more of them without joining the others, may, within one year from the date on which the design ceased to have effect, make an application for the restoration of the design in the prescribed manner on payment of such fee as may be prescribed.

Restoration of lapsed designs.

- (2) An application under this section shall contain a statement, verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the prescribed fee, and the Controller may require from the applicant such further evidence as he may think necessary.
- 13. (1) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is satisfied that the failure to pay the fee for extension of the period of copyright was unintentional and that there has been no undue delay in the making of the application, the Controller shall upon payment of any unpaid fee for extension of the period of copyright together with prescribed additional fee restore the registration of design.

Procedure for disposal of applications for restoration of lapsed designs. (2) The Controller may, if he thinks fit as a condition of restoring the design, require that any entry shall be made in the register of any document or matter which under the provisions of this Act, has to be entered in the register but which has not been so entered.

Rights of proprietor of lapsed design which have been re-stored.

- 14. (1) Where the registration of a design is restored, the rights of the registered proprietor shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken definite steps by contract or otherwise to avail themselves of, the benefit of applying the design between the date when the registration of the design ceased to have effect and the date of restoration of the registration of the design.
- (2) No suit or other proceeding shall be commenced in respect of piracy of a registered design or infringement of the copyright in such design committed between the date on which the registration of the design ceased to have effect and the date of the restoration of the design.

Requirements before delivery on sales.

- 15. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—
 - (a) (if exact representations or specimens were not furnished on the application for registration) furnish to the Controller the prescribed number of exact representations or specimens of the design; and, if he fails to do so, the Controller may, after giving notice thereof to the proprietor, erase his name from the register and thereupon the copyright in the design shall cease; and
 - (b) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered; and, if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.
- (2) Where a representation is made to the Central Government by or on behalf of any trade or industry that in the interest of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Central Government may, if it thinks fit, by rule under this Act, dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as it thinks fit.

Effect of disclosure on copyright.

16. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person, other than the proprietor of the design, and the acceptance of a first and confidential order for articles bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs.

- 17. (1) During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed manner.
- (2) Any person may, on an application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design.

Information as to existence of copyright.

18. On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of articles, and shall state the date of registration, and the name and address of the registered proprietor.

19. (1) Any person interested may present a petition for the cancellation of the registration of a design at any time after the registration of the design, to the Controller on any of the following grounds, namely:—

Cancellation of registration.

- (a) that the design has been previously registered in India; or
- (b) that it has been published in India or in any other country prior to the date of registration; or
 - (c) that the design is not a new or original design; or
 - (d) that the design is not registrable under this Act; or
 - (e) that it is not a design as defined under clause (d) of section 2.
- (2) An appeal shall lie from any order of the Controller under this section to the High Court, and the Controller may at any time refer any such petition to the High Court, and the High Court shall decide any petition so referred.
- 20. A registered design shall have to all intents the like effect as against the Government as it has against any person and the provisions of Chapter XVII of the Patents Act, 1970 shall apply to registered designs as they apply to patents.

Designs to bind Government.

39 of 1970.

CHAPTER IV

INDUSTRIAL AND INTERNATIONAL EXHIBITIONS

21. The exhibition of a design, or of any article to which a design is applied, at an industrial or other exhibition to which the provisions of this section have been extended by the Central Government by notification in the Official Gazette, or the publication of a description of the design, during or after the period of the holding of the exhibition, or the exhibition of the design or the article or the publication of a description of the design by any person elsewhere during or after the period of the holding of the exhibition, without the privity or consent of the proprietor, shall not prevent the design from being registered or invalidate the registration thereof:

Provisions as

Provided that---

- (a) the exhibitor exhibiting the design or article, or publishing a description of the design, gives to the Controller previous notice in the prescribed form; and
- (b) the application for registration is made within six months from the date of first exhibiting the design or article or publishing a description of the design.

CHAPTER V

LEGAL PROCEEDINGS

22. (1) During the existence of copyright in any design it shall not be lawful for any person—

Piracy of registered design.

- (a) for the purpose of sale to apply or cause to be applied to any article in any class of articles in which the design is registered, the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or
- (b) to import for the purposes of sale, without the consent of the registered proprietor, any article belonging to the class in which the design has been registered, and having applied to it the design or any fraudulent or obvious imitation thereof; or
- (c) knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article in any class of articles in which the design is registered

without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

- (2) If any person acts in contravention of this section, he shall be liable for every contravention—
 - (a) to pay to the registered proprietor of the design a sum not exceeding twenty-five thousand rupees recoverable as a contract debt, or
 - (b) if the proprietor elects to bring a suit for the recovery of damages for any such contravention, and for an injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable in respect of any one design under clause (a) shall not exceed fifty thousand rupees:

Provided further that no suit or any other proceeding for relief under this sub-section shall be instituted in any court below the court of District Judge.

- (3) In any suit or any other proceeding for relief under sub-section (2), every ground on which the registration of a design may be cancelled under section 19 shall be available as a ground of defence.
- (4) Notwithstanding anything contained in the second proviso to sub-section (2), where any ground on which the registration of a design may be cancelled under section 19 has been availed of as a ground of defence under sub-section (3) in any suit or other proceeding for relief under sub-section (2), the suit or such other proceeding shall be transferred by the court, in which the suit or such other proceeding is pending, to the High Court for decision.
- (5) When the court makes a decree in a suit under sub-section (2), it shall send a copy of the decree to the Controller, who shall cause an entry thereof to be made in the register of designs.

Application of certain provisions of the Act as to patents to designs. 23. The provisions of the Patents Act, 1970 with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for reference to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

CHAPTER VI

GENERAL

Fees

Fccs

- 24. (1) There shall be paid in respect of the registration of designs and applications therefor and in respect of other matters relating to designs under this Act such fees as may be prescribed.
- (2) A proceeding in respect of which a fee is payable under this Act or the rules made thereunder shall be of no effect unless the fee has been paid.

Provisions as to registers and other documents in the patent office

Notice of trust not to be entered in registers. 25. There shall not be entered in any register kept under this Act, or be receivable by the Controller, any notice of any trust expressed, implied or constructive.

Inspection of and extracts from registers.

26. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act; and certified copies, sealed with the seal of the patent office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee:

39 of 1970.

Provided that where such register is maintained wholly or partly on computer, the inspection of such register under this section shall be made by inspecting the computer print out of the relevant entry in the register so maintained on computer.

27. Reports of or to the Controller under this Act other than the report referred to in section 45 made shall not in any case be published or be open to public inspection.

Previlege of reports of Controller.

28. Where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection or be published by the Controller.

Prohibition and publication of specification, drawings, etc., where application abandoned, etc.

29. The Controller may, on request in writing accompanied by the prescribed fee, correct any clerical error in the representation of a design or in the name or address of the proprietor of any design, or in any other matter, which is entered upon the register of designs.

Power for Controller to correct clerical errors.

30. (1) Where a person becomes entitled by assignments, transmission or other operation of law to the copyright in a registered design, he may make an application in the prescribed form to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, register him as the proprietor of such design, and shall cause an entry to be made in the prescribed manner in the register of the assignment, transmission or other instrument affecting the title.

Entry of assignment and transmissions in registers.

- (2) Where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a registered design, he may make an application in the prescribed form to the Controller to register his title, and the Controller shall, on receipt of such application and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of designs, with particulars of the instrument, if any, creating such interest.
- (3) For the purposes of sub-section (1) or sub-section (2), an assignment of a design or of a share in a design, a mortgage, licence or the creation of any other interest in a design shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of an instrument embodying all the terms and conditions governing their rights and obligation and the application for registration of title under such instrument is filed in the prescribed manner with the Controller within six months from the execution of the instrument or within such further period not exceeding six months in the aggregate as the Controller on the application made in the prescribed manner allows:

Provided that the instrument shall, on entry of its particulars in the register under subsection (1) or sub-section (2), have the effect from the date of its execution.

(4) The person registered as the proprietor of a design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the design and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the design may be enforced in like manner as in respect of any other movable property.

(5) Except in the case of an application made under section 31, a document or instrument in respect of which no entry has been made in the register in accordance with the provisions of sub-sections (1) and (2) shall not be admitted in evidence in any court in proof of the title to copyright in a design or to any interest therein, unless the court, for reasons to be recorded in writing, otherwise directs.

Rectification of register.

- 31. (1) The Controller may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of designs of any entry, or by any entry made in such register without sufficient cause, or by any entry wrongly remaining on such register, or by an error or defect in any entry in such register, make such order for making, expunging or varying such entry as he thinks fit and rectify the register accordingly.
- (2) The Controller may, in any proceeding under this section, decide any question that may be necessary or expedient to decide in connection with the rectification of a register.
- (3) An appeal shall lie to the High Court from any order of the Controller under this section and the Controller may refer any application under this section to the High Court for decision, and the High Court shall dispose of any application so referred.
- (4) Any order of the Court rectifying a register shall direct that notice of the rectification be served on the Controller in the prescribed manner who shall upon the receipt of such notice rectify the register accordingly.
- (5) Nothing in this section shall be deemed to empower the Controller to make any such order cancelling the registration of a design as is provided for in section 19.

CHAPTER VII

Powers and duties of Controller

Powers of Controller in proceedings under Act.

32. Subject to any rules in this behalf, the Controller in any proceedings before him under this Act shall have the powers of a civil court for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses, compelling the discovery and production of documents, issuing commissions for the examining of witnesses and awarding costs and such award shall be executable in any court having jurisdiction as if it were a decree of that court.

Exercise of discretionary power by Controller.

 Where any discretionary power is by or under this Act given to the Controller, he shall not exercise that power adversely to the applicant for registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of Controller to take directions of the Central Government.

34. The Controller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Central Government for directions in the matter.

Refusal to register a design in certain cases.

- 35. (1) The Controller may refuse to register a design of which the use would, in his opinion, be contrary to public order or morality.
- (2) An appeal shall lie to the High Court from an order of the Controller under this section.

Appeals to the High Court.

36. (1) Where an appeal is declared by this Act to lie from the Controller to the High Court, the appeal shall be made within three months of the date of the order passed by the Controller.

- (2) In calculating the said period of three months, the time (if any) occupied in granting a copy of the order appealed against shall be excluded.
- (3) The High Court may, if it thinks fit, obtain the assistance of an expert in deciding such appeals, and the decision of the High Court shall be final.
- (4) The High Court may make rules consistent with this Act as to the conduct and procedure of all proceedings under this Act before it.

CHAPTER VIII

EVIDENCE, ETC.

37. Subject to any rules made under section 44, in any proceeding under this Act before the Controller, the evidence shall be given by affidavit in the absence of directions the Controller to the contrary; but in any case in which the Controller thinks it right so to do he may take evidence viva voce in lieu of or in addition to evidence by affidavit or may allow any party to be cross-examined on the contents of his affidavit.

Evidence before the Controller.

38. A certificate purporting to be under the hand of the Controller as to any entry, matter or thing which he is authorized by this Act, or any rules made thereunder to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

Certificate of Controller to be evidence.

39. Printed or written copies or extracts, purporting to be certified by the Controller and sealed with the seal of the patent office, of documents in the patent office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in India, and in all proceedings, without further proof or production of the originals:

Evidence of documents in patent office.

Provided that a court may, if it has reason to doubt the accuracy or authenticity of the copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.

40. Any application, notice or other document authorized or required to be left, made or given at the patent office or to the Controller, or to any other person under this Act, may be sent by post.

Applications and notices by post.

- 41. (1) If any person, is by reason of infancy, lunacy or other disability, incapable of making any statement or doing anything required or permitted by or under this Act, the lawful guardian, committee or manager (if any) of the person subject to the disability, or, if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such statement or a statement as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.
- Declaration by infant, lunatic,
- (2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the statement or the doing of the thing.

42. (1) It shall not be lawful to insert-

(i) in any contract for or in relation to the sale or lease of an article in respect of which a design is registered; or

Avoidance of certain restrictive conditions.

- (ii) in a licence to manufacture or use an article in respect of which a design is registered; or
- (iii) in a licence to package the article in respect of which a design is registered, a condition the effect of which may be—
 - (a) to require the purchaser, lessee, or licensee to acquire from the vendor, lessor, or licensor or his nominees, or to prohibit him from acquiring or to restrict in any manner or to any extent his right to acquire from any person or to

prohibit him from acquiring except from the vendor, lessor, or licensor or his nominees any article other than the article in respect of which a design is registered; or

(b) to prohibit the purchaser, lessee or licensee from using or to restrict in any manner or to any extent the right of the purchaser, lessee or licensee, to use an article other than the article in respect of which a design is registered which is not supplied by the vendor, lessor or licensor or his nominee,

and any such condition shall be void.

- (2) A condition of the nature referred to in clause (a) or clause (b) of sub-section (1) shall not cease to be a condition falling within that sub-section merely by reason of the fact that the agreement containing it has been entered into separately, whether before or after the contract relating to the sale, lease or licence of the article in respect of which a design is registered.
- (3) In proceeding against any person for any act in contravention of section 22, it shall be a defence to prove that at the time of such contravention there was in force a contract relating to the registered design and containing a condition declared unlawful by this section:

Provided that this sub-section shall not apply if the plaintiff is not a party to the contract and proves to the satisfaction of the court that the restrictive condition was inserted in the contract without his knowledge and consent, express or implied.

- (4) Nothing in this section shall-
- (a) affect a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;
 - (b) validate a contract which, but for this section, would be invalid;
- (c) affect a condition in a contract for the lease of, or licence to use, an article in respect of which a design is registered, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the article, in respect of which a design is registered, as may be required or to put or keep it in repair.
- (5) The provision of this section shall also apply to contracts made before the commencement of this Act if, and in so far as, any restrictive conditions declared unlawful by this section continue in force after the expiration of one year from such commencement.

CHAPTER IX

AGENCY

Agency.

43. (1) All applications and communications to the Controller under this Act may be signed by, and all attendances upon the Controller may be made by or through a legal practitioner or by or through an agent whose name and address had been entered in the register of patent agents maintained under section 125 of the Patents Act, 1970.

39 of 1970.

- (2) The Controller may, if he sees fit, require-
 - (a) any such agent to be resident in India;
 - (b) any person not residing in India to employ an agent residing in India;
 - (c) the personal signature or presence of any applicant or other person.

CHAPTER X

POWERS, ETC., OF CENTRAL GOVERNMENT

44. (1) Any person who has applied for protection for any design in the United Kingdom or any of other convention countries or group of countries or countries which are members of inter-governmental organisations, or his legal representative or assignee shall, either alone or jointly with any other person, be entitled to claim that the registration of the said design under this Act shall be in priority to other applicants and shall have the same date as the date of the application in the United Kingdom or any of such other convention countries or group of countries or countries which are members of inter-governmental organisations, as the case may be:

Reciprocal arrangement with the United Kingdom and other convention countries or group of countries or intergovernmental organisations.

Provided that-

- (a) the application is made within six months from the application for protection in the United Kingdom or any such other convention countries or group of countries or countries which are members of inter-governmental organisations, as the case may be; and
- (b) nothing in this section shall entitle the proprietor of the design to recover damages for piracy of design happening prior to the actual date on which the design is registered in India.
- (2) The registration of a design shall not be invalidated by reason only of the exhibition or use of or the publication of a description or representation of the design in India during the period specified in this section as that within which the application may be made.
- (3) The application for registration of a design under this section has been made in the same manner as an ordinary application under this Act.
- (4) Where it is made to appear to the Central Government that the legislature of the United Kingdom or any such other convention country or a country which is member of any group of countries or inter-governmental organisation as may be notified by the Central Government in this behalf has made satisfactory provision for the protection of designs registered in India, the Central Government may, by notification in the Official Gazette, direct that the provisions of this section, with such variations or additions, if any, as may be set out in such notification, shall apply for the protection of designs registered in the United Kingdom or that other convention country or such country which is member of any group of countries or inter-governmental organisation, as the case may be.

Explanation 1.—For the purposes of this section, the expression "convention countries", "group of countries" or "inter-governmental organisation" means, respectively, such countries, group of countries or inter-governmental organisation to which the Paris Convention for Protection of Industrial Property, 1883 as revised at Stockholm in 1967 and as amended in 1979 or the Final Act, embodying the results of the Uruguay Round of Multilateral Trade Negotiations, provided for the establishment of World Trade Organisation applies.

Explanation 2.—Where more than one application for protection referred to in subsection (1) has been made for similar protections in the United Kingdom or one or more convention countries, group of countries or countries which are members of inter-governmental organisations, the period of six months referred to in cluase (a) of that sub-section shall be reckoned from the date of which the earlier or the earliest application, as the case may be, of such applications has been made.

45. The Central Government shall cause to be placed before both Houses of Parliament once a year a report respecting the execution of this Act by or under the Controller.

Report of the Controller to be placed before Parliament. Protection of security of India.

- 46. Notwithstanding anything contained in this Act, the Controller shall—
- (a) not disclose any information relating to the registration of a design or any application relating to the registration of a design under this Act, which he considers prejudicial to the interest of the security of India; and
- (b) take any action regarding the cancellation of registration of such designs registered under this Act which the Central Government may, by notification in the Official Gazette, specify in the interest of the security of India.

Explanation.—For the purposes of this section, the expression "security of India" means any action necessary for the security of Indian which relates to the application of any design registered under this Act to any article used for war or applied directly or indirectly for the purposes of military establishment or for the purposes of war or other emergency in international relations.

Power of Central Government to make rules.

- 47. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the form of application for registration of design, the manner of filing it at the patent office and the fee which shall accompany it, under sub-section (2) of section 5;
 - (b) the time within which the registration is to be effected under sub-section (5) of section 5;
 - (c) the classification of articles for registration under sub-section (1) of section 6;
 - (d) the particulars of design to be published and the manner of their publication under section 7;
 - (e) the manner of making claim under sub-section (1) of section 8;
 - (f) the manner of making applications to the Controller under sub-section (5) of section 8;
 - (g) the additional matters required to be entered in the register of designs and the safeguards to be made in maintaining such register in computer floppies or diskettes under sub-section (I) of section 10;
 - (h) the manner of making application and fee to be paid for extension of the period of copyright under and the fee payable thereto, sub-section (2) of section 11;
 - (i) the manner of making application for restoration of design and the fee to be paid with it under sub-section (1) of section 12;
 - (j) the manner of verification of statement contained in an application under sub-section (2) of section 12;
 - (k) the additional fee to be paid for restoration of the registration of design under sub-section (1) of section 13;
 - (1) the provisions subject to which the right of the registered proprietor shall be under sub-section (1) of section 14.
 - (m) the number of exact representation or specimen of the design to be furnished to the Controller under clause (a) of sub-section (1) of section 15;
 - (n) the mark, words or figures with which the article is to be marked denoting that the design is registered under clause (b) of sub-section (1) of section 15;

- (o) the rules to dispense with or modify as regards any class or description of articles and any of the requirements of section 15 as to marking under sub-section (2) of that section;
- (p) the fee to be paid for and the manner of inspection under sub-section (1) of section 17:
- (q) the fee to be paid to obtain a certified copy of any design under sub-section (2) of section 17;
 - (r) the fee on payment of which the Controller shall inform under section 18;
- (s) the form for giving notice to the controller under clause (a) of the proviso to section 21;
- (t) the fee to be paid in respect of the registration of designs and application therefor, and in respect of other matters relating to designs under sub-section (1) of section 24:
- (u) the fee to be paid for giving certified copy of any entry in the register under section 26;
- (ν) the fee to be accompanied with the requests in writing for correcting any clerical error under section 29;
- (w) the form in which an application for registration as proprietor shall be made and the manner in which the Controller shall cause an entry to be made in the register of the assignment, transmission or other instrument effecting the title under sub-section (1) of section 30;
- (x) the form in which an application for title shall be made and the manner in which the Controller shall cause notice of the interest to be entered in the register of designs with particulars of the instrument, if any, creating such interest under subsection (2) of section 30;
- (y) the manner of filing an application for registration and for making application for extension of time as referred to in sub-section (3) of section 30;
- (z) the manner of making application to the Controller for rectification of register under sub-section (1) of section 31;
- (za) the manner in which the notice of rectification shall be served on the Controller under sub-section (4) of section 31;
- (zb) the rules regulating the proceedings before the Controller under section 32:
- (zc) the time which shall be granted to the applicants for being heard by the Controller under section 33;
- (zd) the fee to be accompanied with an appeal under sub-section (1) of section 36;
 - (ze) any other matter which is required to be, or may be, prescribed.
- (3) The power to make rules under this section shall be subject to the conditions of the rules being made after previous publication.
- (4) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses

agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Act.

CHAPTER XI

REPEAL AND SAVING

Repeal and savings.

48. (1) The Designs Act, 1911 is hereby repealed.

thereon and to any registration granted in pursuance thereof.

2 of 1911.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1987 with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, recision, determination, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Designs Act, 1911, shall, in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

10 of 1897.

- (3) The provisions of this Act shall apply to all applications for registration of designs pending at the commencement of this Act and to any proceedings consequent
- (4) Notwithstanding anything contained in this Act, any proceeding pending in any court at the commencement of this Act may be continued in that court as if this Act has not been passed.
- (5) Notwithstanding anything contained in sub-section (2), the date of expiration of the copyright in the designs registered before the commencement of this Act shall, sub-ject to the provisions of this Act, be the date immediately after the period of five years for which it was registered or the date immediately after the period of five years for which the extension of the period of copyright for a second period from the expiration of the original period has been made.

2 of 1911.

STATEMENT OF OBJECTS AND REASONS

Since the enactment of the Designs Act, 1911 considerable progress has been made in the field of science and technology. The legal system for the protection of industrial designs requires to be made more efficient in order to ensure effective protection to registered designs. It is also required to promote design activity in order to promote the design element in an article of production. The proposed Designs Bill is essentially aimed to balance these interests. It is also intended to ensure that the law does not unnecessarily extend protection beyond what is necessary to create the required incentive for design activity while removing impediments to the free use of available designs. To achieve these purposes, the Bill incorporates inter alia, the following, namely:—

- (a) it enlarges the scope of definition of "article" and "design" and introudces definition of "original";
 - (b) it amplifies the scope of "prior publication";
- (c) it incorporates the provisions for delegation of powers of the Controller to other officers and duties of Examiners;
 - (d) it contains provision for identification of non-registrable designs;
- (e) it contains provision for substitution of application before registration of a design;
- (f) it introduces internationally followed system of classification in the place of Indian classification.
 - (g) it contains provision for maintaining the Register of design on computer;
 - (h) it contains provision for restoration of lapsed designs;
- (i) it contains provision for appeal against order of the Controller before the High Court instead of Central Government as existing;
 - (i) it revokes the period of secrecy of two years of a registered design;
- (k) it provides for compulsory registration of any document for transfer of right in the registered design;
- (1) it introduces additional grounds in cancellation proceedings and makes provision for initiating the cancellation proceedings before the Controller in place of High Court;
- (m) it enhances the quantum of penalty imposed for infringement of registered design.
- (n) it contains provisions for grounds of cancellation to be taken as defence in the infringement proceedings to be initiated in any court not below the court of the District Judge;
- (o) it enhances initial period of registration from 5 to 10 years, to be followed by a further extension of a period of five years;
- (p) it contains provisions for allowing of priority to other convention countries and countries belonging to the group of countries or inter-governmental organizations apart from United Kingdom and other Commonwealth countries;

- (q) it contains provisions for avoidance of certain restrictive conditions for the control of anti-competitive practices in contractual licences;
 - (r) it contains specific provisions to protect the security of India.
- 2. In view of the extensive amendments necessitated in the Designs Act, 1911, it has been thought fit to repeal and re-enact the said Act incorporating the necessary changes.
- 3. The Bill seeks to achieve the above object. The Notes on clauses explain the various provisions of the Bill.

RAMAN SINGH.

NOTES ON CLAUSES

Clause 1.—This clause corresponds to section 1 of the Designs Act, 1911 (hereafter referred to as the existing Act) and deals with the short title of the Bill, the area of its operation and the date of commencement. As adequate steps are required to be taken for administering the proposed legislation, provision has been made to bring different provisions of the Act on different dates.

Clause 2.—This clause contains definitions of various expressions used in the Bill. While most of the definitions in the existing Act have been retained, the definition of "original" has been incorporated vide clause (o). According to this definition, "original", in relation to a design, means originating from the auther of such design and includes the cases which though old in themselves yet are new in their application. The definition of "original" has been incorporated in order to specify the registerable designs. The definitions of "article" and "design" have been amplified to align them with similar definitions internationally accepted for providing wider protection to the intellectual property. The definition of "article" has been amplified for inclusion of parts of articles sold separately within its scope. The definition of "design" has been amplified to incorporate therein the composition of lines and colours so as to avoid overlapping with the Copyright Act, 1957 regarding definition of "design" in respect of artistic work.

Clause 3.—This clause enables the Controller General of Patents, Designs and Trade Marks appointed under the Trade Marks the legislation to function as the Controller of Designs under the proposed legislation. It also enables the Central Government to appoint as many examiners and other officers with such designations as it may think fit. This clause also empowers the Controller to issue orders authorising his subordinates to discharge functions under his superintendence and directions. It is proposed to utilise the services of the existing administrative machinery in the Patent office for the present.

Clause 4.—This clause is a new one and it relates to prohibition of registration of certain designs. This clause prohibits designs which lacks novelty or originality. It also prohibits registration of designs which had been disclosed to the public anywhere in India or in any other country by publication in a tangible form or in any other way prior to the filing date or which is not significantly distinguishable from non designs or combination of non-designs or comprises or contains scandalous or obscene matter.

Clause 5.—This clause corresponds to section 43 of the existing act and deals with application of registration of designs. The existing clause has been modified in order to register any design which is new or original or not previously published in India or in any other country and which is not contrary to public order and morality. This clause also seeks to provide for the application for registration of every design to be referred to an examiner appointed under clause 3 of the proposed legislation for ascertaining the registrability of the design. In view of introduction of classification of articles based on International System of classification, the designs need not be registered in more than one class unlike under the existing Act. This clause also seeks to provide that the appeals may be preferred to the High Court instead of the Central Government as specified under the existing Act.

Clause 6.—This clause is a new one and it deals with the registration of particular articles. This clause seeks to allow the proprietor of any design, who has already registered the design in any particular class or article, to register the design in respect of some one or more classes of articles comprised in that class of articles since the classification of that design is based on the article to which the design has been applied and it follows the International System of classification, i.e., Lucerne Classification.

Clause 7.—This clause is a new one and it relates to publication of registered designs which shall allow publication of the design as soon as the design is registered and thereafter it becomes open for public inspection. The clause has been introduced keeping in view of that any person can come to know of the particulars of the design through its publication.

Clause 8.—This clause is a new one and it deals with the powers of the Controller to make orders regarding substitution of applications, etc. This clause allows applications for registration of a design to proceed, subject to the restrictions contained in therein, in the name of the claimant or in the name of the claimants application to any new name by operation of law. Sub-clause (4) deals with joint applicants when any of such applicants dies. Sub-clause (5) deals with disputes between joint applicants for registration of a design before the Controller.

Clause 9.—This clause corresponds to section 45 of the existing and provides for grant of certificate to the proprietor of the design, when registered. In case of loss of original certificate or in any other case, the Controller is competent to furnish one or more copies of the certificate of registration.

Clause 10.—This clause corresponds to section 46 of the existing Act and it provides for keeping, at the patent office, of a book called the Register of Designs containing the applicant's name, address of the proprietor, notifications of assignments and of transmissions and such other matters as may be specified in the rules. This clause also enables maintenance of the Register of Designs either wholly or partly in computer floppies or diskettes subject to the safe guards as may be specified in the rules. The existing section has been modified in the manner stated above so as to enable the Controller to maintain the register in computer readable form for better retrieval.

Clause 11.—This clause corresponds to section 47 of the existing Act and it deals with copyright on registration of designs with the exception that the initial period of five years has been extended to ten years. However, in the present clause, the total period of fifteen years of copyright has been kept unchanged, as under the Agreement on Trade Related Intellectual Property Rights (TRIPS) the protection for the period of at least ten years has been stipulated.

Clause 12—This clause is a new one and it deals with the registration of lapsed designs. It enables the Controller to restore registration of lapsed designs, if such registration had ceased to have effect by reason of failure to pay the fee for extension of copyright, on receipt of necessary application, statement verified in the prescribed manner and the fee as may be specified in the rules. This clause has been introduced with a view to help the registered proprietors for genuine lapses in not filing the request for extension of copyright within the prescribed period. Similar provision is also available in the Patents Act, 1970.

Clause 13.—This clause is a new one and deals with the procedure for disposal of applications for restoration of lapsed designs. This clause is consequential to clause 12 and it empowers the Controller to restore the registration of designs upon payment of fees and additional fees as may be specified by rules.

Clause 14.—This clause is a new one and it provides for the rights of proprietors of lapsed designs which have been restored. This clause is consequential to clause 12.

Clause 15.—This clause corresponds to section 48 of the existing Act and it deals with the requirements before delivery of articles on sale. The existing provision has been modified to include giving of prior notice when the Controller may erase any name from the register to comply with the various requirements before delivery on sale.

Clause 16. —This clause corresponds to section 49 of the existing Act and deals with the effect of disclosure of a design by the proprietor to any other person.

Clause 17.—This clause corresponds to section 50 of the existing Act and it deals

with inspection of registered designs. Under the existing provision, a design shall not be open to inspection except by the proprietor or a person authorised in writing by him or a person authorised by a Controller or court during the existence of Copyright in a design or such shorter period not being less than two years from the registration of the design as may be prescribed.

The present clause removes the said period of secrecy and it enables the public to inspect any registered design and to obtain their certified copies on payment of the fees as may be prescribed in the rules. The proposed provision removes considerable hardship of interested persons in ascertaining the designs during initial period of existence of the registration.

Clause 18.—This clause corresponds to section 51 of the existing Act and it deals with information as to existence of copyright. This clause enables the Controller on the request of any person on furnishing of such information as may enable the Controller to identify the design, and on payment of the fees as may be prescribed in the rules to furnish the person information about the existence of the registration of the design, the classes of articles in respect of which the registration subsists, the date of registration and the name and address of the registered proprietor.

Clause 19.—This clause corresponds to section 51A of the existing Act and it deals with cancellation of registration of designs. In addition to the grounds of cancellation provided in the existing provisions, the following grounds have been added, namely:—

- (i) that the design is not registrable under the proposed legislation;
- (ii) that it is not a design as defined in clause (b) of clause 2 of the proposed legislation,

the provision contained in sub-clause (b) of sub-section (1) of section 51A of the existing Act is proposed to be amplified in order to consider the prior publication on global basis instead of regional basis, *i.e.*, in India.

The said additional grounds will help interested person to get cancelled the registered design in better comprehensive manner. All grounds of cancellation can be taken up before the Controller irrespective of any particular time limit in place of restricted ground and specific time limit under the existing Act. Such amplification will avoid expenses and time involved in High Court as mandatory under the existing Act.

Clause 20.—This clause corresponds with section 51B of the existing Act and it states that a registered design shall have to all intents the like effect as against the Government as it has against any person and the provisions of Chapter XVII, relating to use of inventions for purposes of Government and acquisition of inventions by Central Government, of the Patents Act, 1970 shall apply to registered designs as they apply to patents.

Clause 21.—This clause corresponds to section 52 of the existing Act and it deals with Industrial and International Exhibitions of Designs. This clause provides that the exhibition of a design or of any article to which a design is applied at an industrial or other exhibition to which the provisions of this clause have been extended by the Central Government by notification in the Official Gazette shall not prevent the design from being registered or invalidate any registration thereof subject to the fulfilment of the conditions stipulated therein.

Clause 22.—This clause corresponds to section 53 of the existing Act relating to piracy of registered designs. This clause modifies the said section 53 so as to incorporate therein enhancement of quantum of penalty for any infringement of the registered design. No suit for infringement under this clause can be initiated in any court below the court of District Judge. In the infringement proceeding, grounds under cancellation proceeding shall be available as a ground for defence. Under the existing section 53, if any person acts in contravention of that section he shall be liable for every such contravention to pay to the

registered proprietor of the design a sum not exceeding five hundred rupees recoverable as a contract debt or if the proprietor elects to bring a suit for the recovery of the damages for any such contravention, and for any injunction against the repetition thereof, to pay such damages as may be awarded and to be restrained by injunction and the total sum recoverable shall not exceed one thousand rupees. It is proposed to enhance the aforesaid maximum damage of five hundred rupees to twenty-five thousand rupees and total sum recoverable from one thousand rupees to fifty thousand rupees. Provision has also been made for making entry in the register of designs by the Controller in case a Court makes a decree in a suit under sub-clause (2) of this clause.

Clause 23.—This clause corresponds to section 54 of the existing Act and it deals with application of certain provisions of the proposed legislation as to patents to designs. This clause states that the provisions of the Patent Act, 1970 with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for reference to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

Clause 24.—This clause corresponds to section 57 of the existing Act and it deals with fees. This clause enables the Central Government to prescribe fee payable in respect of registration of designs and applications therefor, and in respect of other matters relating to designs. Sub-clause (2) of this clause states that the proceeding in respect of which a fee in payable under the proposed legislation are the rules made thereunder shall be no effect unless such fee has been paid.

Clause 25.—This clause corresponds to section 58 of the existing Act and it prohibits the notice of trust to be entered in the Register. This clause provides that no notice of any trust expressed, implied or constructive shall be entered in the register kept under the proposed legislation or are receivable by the Controller.

Clause 26.—This clause corresponds to section 59 of the existing Act. This clause provides that every register kept under the proposed legislation shall at all convenient times be opened to inspection of the public and they could obtain certified copies of any entry in the register on making necessary request accompanied by the fees as may be prescribed by rules. The provision has been amplified to incorporate the inspection of registrar maintained on Computer by inspecting the Computer print outs.

Clause 27.— This clause corresponds to section 60 of the existing Act and it deals with the privilege of reports of Controller. Clause 45 provides for laying of report of the Controller before Parliament. All reports of the Controller other than the report mentioned in clause 45 and all reports to the controller made under the proposed legislation shall not be published or shall be opened to public inspection.

Clause 28—This clause corresponds to section 61 of the existing Act and it prohibits of publication of specification, drawing, etc., where application has been abandoned, etc. This clause states that where an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application will not be opened to public inspection or be published by Controller at any time.

Clause 29.—This clause corresponds to section 62 of the existing Act and it provides that the Controller may, on request in writing accompanied by requesits fee, correct any clerical error in the representation of a design or in the name and address of any design, address of the proprietor of any design or in any other matter which is entered upon the register of designs.

Clause 30. —This clause corresponds to section 63 of the existing Act, relating to entry of assignments and transmission in registers. This clause modifies section 63 of the existing Act by addition of a new sub-clause, namely, sub-clause (3) making compulsory

registration of documents conveying such assignment or share in design, mortage, license or any other interest in the design with the Controller within six months from the execution of the instrument or within such further period not exceeding six months in the aggregate as the Controller may, on an application made to him in the prescribed manner allow. Unless such registration has been made, the assignment or transmission shall not be valid. This clause enables the public to ascertain the details of transfer of rights from the register of designs.

Clause 31.—This clause corresponds to section 64 of the existing Act relating to rectification of register. This clause lays down the procedure for rectification of any entry in the register of designs. Sub-clause (3) provides that an appeal against the order of the Controller under this clause shall be to the High Court. Provisions has also been made to the effect that any order of the Court rectifying the register shall direct that notice of the rectification should be served on the Controller as per the rules and on receipt of such notice, the controller is required to rectify the register accordingly.

Clause 32.—This clause corresponds to section 65 of the existing Act relating to power of Controller in proceedings under the proposed legislation. It provides that, subject to any rules as may be made by the Central Government, the Controller shall have, in any proceedings before him under the proposed legislation, the power of the civil court for the purpose of receiving evidence, administering oath, enforcing the attendance of witnesses, compelling the discovery and production of documents, issuing commissions for the examining of the witnesses and awarding courts. The award of courts by the Controller shall be executable as if it were a decree of a court.

Clause 33.—This clause corresponds to section 67 of the existing Act. This clause provides that the Controller has to give an opportunity of being heard to the person or persons before exercising his discretionary powers adverse to such person or persons.

Clause 34.—This clause corresponds to section 68 of the existing Act and it deals with power of Controller to take directions of the Central Government. It provides that the Controller may take directions of the Central Government in case of any doubt or difficulty arising in administration of the proposed legislation.

Clause 35.—This clause corresponds to section 69 of the existing Act with the modification that appeal under this section shall lie to the High Court instead of to the Central Government. This clause seeks to empower the Controller to refuse to register the design, which, in his opinion, is contrary to public order or morality. Sub-clause (2) of this clause provides that an appeal under this clause shall lie to High Court.

Clause 36.—This clause corresponds to section 70 of the existing Act with the modification of the insertion of the words High Court for the words Central Government. In this clause, appeal shall lie to the High Court and such appeal shall be made within three months from the date of the order passed by the Controller. Such appeal shall be in writing and shall be accompanied by the prescribed fee.

Clause 37.—This clause corresponds to section 70A of the existing Act relating to evidence before the Controller with the addition that the High Court may make rules consistent with the provisions of the proposed legislation in respect of procedure relating to all proceedings before it under the legislation. This clause specifically provides that, subject to any rules as may be made by the Central Government under clause 47, the evidence in any proceedings before the Controller shall be given by affidavit and the Controller may take evidence by viva voce in lieu of or in addition to evidence by affidavit. He may also allow any party to be cross-examined on the contents of an affidavit.

Clause '38.—This clause corresponds to section 71 of the existing Act relating to certificate of Controller as to any entry, etc., to be evidence. This clause provides that any certificate issued by the Controller in relation to any entry, matter or thing which he is authorised by the proposed legislation or any rules made thereunder to make or do shall be prima facie evidence of such entry, matter or thing.

Clause 39.—This clause corresponds to section 71A of the existing Act relating to evidence of documents in Patent Office This clause provides that any matter certified by the Controller and sealed with the seal of Patent Office can be admitted as evidence in all courts. However, a court may, if it has reason to doubt the accuracy or authenticity of copies tendered in evidence, require the production of the originals or such further proof as it considers necessary.

Clause 40.—This clause corresponds to section 73 of the existing Act relating to applications and notices by post. It provides that any application, notice or other document authorised or required to be left, made or given at the Patent Office or to the Controller or to any other person under the proposed legislation may be sent by post.

Clause 41.—This clause contains the same provision as contained in section 74 of the existing Act and it deals with declaration by infant, lunatic, etc. It allows for making statement or doing anything permitted under the proposed legislation on behalf of a person incapacitated to make or do so due to the infancy, lunacy or other disabilities by lawful guardian, Committee or manager (if any) of such applicant or any person appointed by the court of competent jurisdiction.

Clause 42.—This clause deals with avoidance of certain restrictive conditions in contracts, leases and certain licenses, to be imposed inview of article 40 of the TRIPS which provide the control of anticompetitive practice in contracted licences. It prohibits insertion of a condition, requiring purchase or giving on lease or license to acquire from a vendor, lessor, licensor or his nominees or prohibiting any of them from acquiring or restricting them in any manner or to any extend the right to acquire from any person or to prohibit them from acquiring except from the vendor, lessor, licensor or his nominee any article other than the article in respect of which a design is registered, in any contract for or in relation to the sale or lease of an article in respect of which a design is registered or in a license to manufacture or use any article in respect of a design is registered or in a license for packaging an article in respect of a design is register. Sub-clause (5) of this clause provides that the provisions of the proposed clause shall also apply to contracts made before the commencement of the proposed legislation if and in so far as any restrictive conditions declared as unlawful by this clause continue in force after the expiration of one year from such commencement.

Clause 43.—This clause corresponds to section 76 of the existing Act relating to agency. The existing provision has been modified to define the agent who can act before the Controller for any proceeding whose name and address has been entered in the register of patent agents maintained under section 125 of the Patents Act, 1970.

Clause 44—This clause corresponds to section 78A of the existing Act relating to reciprocal arrangements with the United Kingdom and other Commonwealth Countries. The provision is proposed to be extended to countries which are members of any group of countries or Inter-Governmental organisations. The existing Act provides priority to the United Kingdom and other Commonwealth Countries, but in view of India's accession to the Paris Convention and India being a signatory to the World Trade Organisation (WTO), the same has been modified by this clause so that the right of priority can be extended to the convention countries and inter-governmental organisations. In view of above an explanation has been provided to this clause explaining that "convention countries", "group of countries" or "Inter-Governmental Organisation" means respectively, such countries, group of countries or Inter-Governmental Organisations to which the Paris Convention to protection of Industrial Property, 1883 so revised at Stockholm in 1967 and as amended in 1979 or the Final Act, embodying the results of the Uruguay Round of Multilateral Trade Negotiations, provided for the establishment of World Trade Organisations applies. Another Explanation has been provided for reckoning the date of priority from the date on which the earlier or the earliest application of the reciprocity applications has been made.

Clause 45.—This clause is the new one requiring the Central Government to place a report respecting the execution of the proposed legislation by or under the Controller every year before Parliament. This provision will ensure greater transparency of the system of administration of designs.

Clause 46.—This clause is a new one and corresponds to similar provision relating to protection of security of India available under the Patents Act, 1970. It is proposed to be incorporated for protection of security of India in relation to certain types of designs which may be prejudicial to the interest of the security of India. This provision enables the Central Government to direct the Controller to take such action including non-disclosure of information and cancellation of registration of designs if the Central Government by notification in the Official Gazette so specify. Such action would be in the interest of the security of India. The Explanation to this clause defines the expression "security of India".

Clause 47.—This clause empowers the Central Government to make, by notification in the Official Gazette, rules for carrying out the provisions of the proposed legislation. Sub-clause (2) enumerates the various matters in respect of which such rules may be made. These matter, inter alia, include the form of application for registration of designs, the manner of filing of such applications in the patents office and the fee which shall accompany such applications, the classification of articles for registration, the manner of publication of particulars of designs, and the manner of giving notice of rectification to the Controller. Sub-clause (3) provides that the power to make rules under this clause shall be subject to the condition of the rules being made after previous publication. Sub-clause (4) provides that every rule made by the Central Government under this clause shall be laid before Parliament.

Clause 48.—This clause deals with repeal and savings. Sub-clause (1) of this clause seeks to repeal the Designs Act, 1911. Sub-clause (2) seeks to save notifications, rules, orders, certificates, applications, etc., issued, given or done under the Act sought to be repealed. Sub-clause (3) provides that the proposed legislation shall be applicable to the pending applications. Sub-clause (4) saves continuance of pending proceedings in courts as if the new legislation has not been passed. Sub-clause (5) clarifies the date of expiration of copyright in the designs registered before the commencement of the proposed legislation.

FINANCIAL MEMORANDUM

The Designs Bill, 1999 proposes to repeal and re-enact the Designs Act, 1911. Clause 3 of the Bill provides that the Controller-General of Patents, Designs and Trade Marks (CGPDTM) appointed under sub-section (1) of section 4 of the Trade and Merchandise Marks Act, 1958 shall be the Controller of Designs for the purposes of the proposed legislation. Sub-clause (2) of the said clause makes provision for the Central Government to appoint as many Examiners and other officers and with such designations, as it thinks fit. The provisions contained in clause 3 of the Bill envisage only the method of appointment of the Controller-General and Examiners who are already discharging their functions under the Designs Act, 1911. The other infrastructure and the staff required for the administration and enforcement of the proposed legislation shall be the existing infrastructure and the staff under the Designs Act, 1911 which is being dealt with by the Patent Office. Hence no financial liabilities are envisaged for the enforcement of the proposed legislation in the present Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 47 of the Bill empowers the Central Government to make, by notification in the Official Gazette, rules to carry out the provisions of the proposed legislation. Subclause (2) of that clause enumerates the matters with respect to which rules may be made under this clause. These matters, inter alia, relate to the manner of making applications and the fee payable for such applications; the manner of advertisement of a registered design, the manner of making entry in the register of assignment, transmission or other instrument effecting the title and other matters of a procedural nature. Sub-clause (3) of that clause provides that the power to make rules is subject to the condition of their previous publication. The rules are required to be laid before Parliament.

2. The aforesaid matters relate to matters of procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power, is therefore, of a normal character.

R. C. TRIPATHI, Secretary-General.